THIRUNAVUKARASU ANGAPPAN
v. KERAJAAN MALAYSIA & ORS

HIGH COURT MALAYA, IPOH
SU TIANG JOO JC
[JUDICIAL REVIEW NO: AA-25-15-05-2021]
25 AUGUST 2022

Abstract – *Where there are medical records pointing to the applicant suffering from a severe mental health condition and receiving treatment, it behoves the disciplinary authority to establish a Committee of Investigation ('CI') pursuant to reg. 37(5) of the Public Officers (Conduct and Discipline) Regulations 1993, to ascertain whether such a condition would justify the applicant being absent from duty especially when the applicant's employer had refused his requests to mitigate the side-effects of the medication he has to take. If a CI is not established, the disciplinary authority ought to provide its reason for not doing so.*

ADMINISTRATIVE LAW: *Judicial review – Application for – Applicant suffered from panic disorder and major depression – Applicant charged under reg. 37 of Public Officers (Conduct and Discipline) Regulations 1993 for absence without leave and justification – Applicant dismissed from employment – Whether disciplinary authority and appeal board considered medical documents on applicant's mental health – Whether disciplinary authority ought to have established Committee of Investigation ('CI') – Whether failure to establish CI meant that disciplinary procedure was unfair – Whether decision to dismiss was illegal and irrational*

This was a judicial review application by a Government school teacher ('applicant'), against the respondents, namely (i) the Government of Malaysia ('first respondent'); (ii) Kementerian Pendidikan Malaysia ('second respondent'); (iii) Lembaga Tatatertib Perkhidmatan Pendidikan, Kementerian Pendidikan Malaysia ('third respondent'); and (iv) Lembaga Rayuan Tatatertib Perkhidmatan Pendidikan, Suruhanjaya Perkhidmatan Pelajaran Malaysia ('fourth respondent'). The applicant suffered from panic disorder and major depression and had undergone treatment. He sought to be re-assigned to teach the afternoon schooling sessions but his requests were denied and he was subjected to disciplinary proceedings for misconduct. The charge under reg. 37 of the Public Officers (Conduct and Discipline) Regulations 1993 ('Regulations'), was that he had absented himself from work without leave and justification on many days in 2018 and 2019. The applicant put forward his letter of representation in answer to the charges brought against him. The applicant enclosed his follow-up orthopaedic treatment card, various medical chits and a consent form directed to the hospital where he was receiving treatments, consenting for his psychiatric

records to be released to the headmaster of the school that he was teaching. In fact, the applicant had obtained a letter from the hospital, addressed to the headmaster of the school, saying that he had been receiving treatment for major depression and that this was a serious mental illness. A decision was made by the third respondent that the applicant was not able to exculpate himself from the said charges. The third respondent found him guilty as, save for 13 days, all the other days that he was absent without leave were without justification. The applicant's right to emoluments were forfeited and he was dismissed with effect from 14 January 2020. The applicant appealed to the fourth respondent but the fourth respondent upheld the third respondent's decision to have the applicant dismissed. In this judicial review application, the applicant contended that the third respondent would not have the ability to assess the psychiatric condition of the applicant. The third respondent ought to have set up a Committee of Investigation ('CI') to ascertain the state of the applicant's mental health condition pursuant to reg. 37(5) of the Regulations, and if it had done so, the specialised knowledge on mental health would be made available especially that on major depression and panic disorders and this would have most probably exculpated the applicant. This failure had resulted in the applicant being denied the opportunity to call certain witnesses *ie,* the specialist psychiatrists who treated him or independent specialists to verify his state of health which caused him to absent himself. The applicant further asserted that he was denied the right to mitigate before such drastic action to dismiss him was made.

Held (allowing application):

(1) The applicant had laid materials before the third and fourth respondents on his state of medical *ie*, his mental health. The fourth respondent admitted to considering these documents. However, there was no finding at all on the medical condition of the applicant. The silence to deal with this serious ailment suffered by a man who was suffering to cope and who was at the same time, desperately seeking to hold on to his job so as to be able to pay off his housing loan and to look after his aged mother was deafening. With the issue of the applicant's mental health not canvassed at all, the inference to be drawn was that the third respondent and later the fourth respondent on appeal, did not consider it at all or failed to engage their minds on the need to establish a CI when it was clearly necessary to do so. (paras 66, 68 & 79)

(2) There were no materials produced by the respondents to challenge the appellant's ailment of major depression and panic disorders, his daily morning struggles to cope with the side-effects of the medication he had to take and the silence of the second respondent in the face of his appeals to be allowed to teach in the afternoon sessions and all of which were relied upon by the applicant to justify him having to be absent on many days. In all fairness, the third respondent ought to have established a CI to address these issues pursuant to reg. 37(5) of the Regulations. (paras 80 & 81)

(3) The failure by the third respondent to establish a CI in the circumstances of this case had meant that the applicant was subjected to a disciplinary procedure that was unfair to him, resulting in a decision which was illegal and irrational. With the third respondent not having given any reason for its failure to establish a CI, the court held that there was no good reason not to establish one when one was necessary, premised upon the materials laid before the third respondent and which ought to have been corrected by the fourth respondent resulting in a decision which was illegal and irrational. (paras 82 & 83)

(4) The court granted (i) an order of *certiorari* to quash the decisions of the third and fourth respondents; and (ii) an order of *mandamus* against the first and second respondents to reinstate the applicant to his former employment without any loss of qualifications and benefits. (para 92)

(5) The lack of opportunity to mitigate was not raised as a ground in the applicant's affidavits and in the statement filed by the applicant in support of his application for judicial review. Therefore, the ground of lack of opportunity to mitigate would not and could not be taken into account. (para 89)

Case(s) referred to:

Ghazi Mohd Sawi v. Mohd Haniff Omar, Ketua Polis Negara, Malaysia & Anor [1994] 2 CLJ 333 SC ***(refd)***

Harpers Trading (M) Sdn Bhd v. National Union Of Commercial Workers [1991] 2 CLJ 881; [1991] 1 CLJ (Rep) 159 SC ***(refd)***

In Re: R Kesavan Rajathurai [2018] 1 LNS 93 HC ***(refd)***

Janagi v. Ong Boon Kiat [1971] 1 LNS 42 HC ***(refd)***

Kesatuan Pekerja-pekerja Bukan Eksekutif Maybank Bhd v. Kesatuan Kebangsaan Pekerja-pekerja Bank & Anor [2017] 4 CLJ 265 FC ***(refd)***

Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal [2001] 2 CLJ 525 FC ***(refd)***

Minister Of Labour, Malaysia v. Sanjiv Oberoi & Anor [1990] 1 CLJ 44; [1990] 1 CLJ (Rep) 200 SC ***(refd)***

Mohd Ezri Saad lwn. Tan Sri Dato' Sri Khalid Abu Bakar & Yang Lain [2021] 1 LNS 777 HC ***(refd)***

Mohd Izzudin Yahya v. Suruhanjaya Perkhidmatan Awam (Semakan Kehakiman No: WA-25-249-06-2019) (Unreported) ***(refd)***

Mohd Sobri Che Hassan v. Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor [2018] 2 CLJ 715 CA ***(refd)***

Nazrul Imran Mohd Nor v. Civil Service Commission Malaysia & Anor [2021] 10 CLJ 737 CA ***(refd)***

Ng Chang Seng v. Technip Geoproduction (M) Sdn Bhd & Anor [2021] 1 CLJ 365 CA ***(refd)***

Ng Hock Cheng v. Pengarah Am Penjara & Ors [1998] 1 CLJ 405 FC ***(refd)***

Nordin Hj Zakaria (Timbalan Ketua Polis Kelantan) & Anor v. Mohd Noor Abdullah [2004] 2 CLJ 777 FC ***(refd)***

Perbadanan Pengurusan Trellises & Ors v. Datuk Bandar Kuala Lumpur & Ors [2021] 2 CLJ 808 CA ***(refd)***

Public Services Commission Malaysia & Anor v. Vickneswary RM Santhivelu [2008] 6 CLJ 573 FC ***(refd)***

A *Raffic Ani lwn. Ketua Polis Negara, Selaku Pengerusi Lembaga Tatatertib Polis Diraja Malaysia & Yang Lain [2021] 1 LNS 1352 HC* ***(refd)***
Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd [2010] 8 CLJ 629 FC ***(refd)***
Rosmawati Ismail v. Pihak Berkuasa Tatatertib Majlis Bandaraya Pulau Pinang & Anor [2022] 6 CLJ 617 HC ***(refd)***
Sam Maark Verak v. Dato' Zainal Abidin Ahmad & Ors [2022] 3 CLJ 661 CA ***(refd)***
B *Savithri Vello v. Eversendai Constructions (M) Sdn Bhd & Anor [2022] 5 CLJ 162 HC* ***(refd)***
T Ganeswaran lwn. Suruhanjaya Polis Diraja Malaysia & Satu Lagi [2005] 3 CLJ 302 CA ***(refd)***
Tai Chin Yee v. Tong San Chan Distributors Sdn Bhd & Anor [2021] 1 LNS 543 HC ***(refd)***
V Paul Raj Chelladurai v. Jabatan Telekom Malaysia Bhd & Ors [2000] 4 CLJ 882 CA ***(refd)***
Yew Wan Leong v. Lai Kok Chye [1990] 1 CLJ 1113; [1990] 1 CLJ (Rep) 330 SC ***(refd)***
C *Yuganthiran Guinda Rajoo v. Dato' Seri Hj Mustafar Hj Ali (Pengerusi Lembaga Tatatertib Kumpulan Sokongan (No. 1) Jabatan Imigresen Malaysia, Putrajaya) & Ors [2021] 1 LNS 2359 HC* ***(refd)***

Legislation referred to:
Education Service Disciplinary Board Regulations 1994, regs. 13, 14(1), 15
D Federal Constitution, art. 5(1)
Industrial Relations Act 1967, ss. 20(3), 33C
Public Officers (Conduct and Discipline) Regulations 1993, regs. 35(2), 37(1), (2), (4), (5), 37B(3), 38(c), 52

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For the respondents - Muhammad Fauzi Md Yusof; Perak State Legal Advisor Office

Reported by Lina E

JUDGMENT

F **Su Tiang Joo JC:**

Introduction

[1] The applicant, a Government school teacher since 2001 with Grade DG32 (KUP) suffers from panic disorder and major depression. His medical
G condition affected his work with him having to absent himself on a number of occasions. He underwent treatment and had sought to be re-assigned to teach the afternoon schooling sessions so as to cope better with the side-effects of the medication taken for his ailment. His requests were denied and he was subjected to disciplinary proceedings for misconduct.

H **[2]** He was found guilty by the Lembaga Tatatertib Perkhidmatan Pendidikan Kementerian Pendidikan Malaysia ("R3") on 14 January 2020. His emoluments for the days he was absent from work forfeited, and he was dismissed. He appealed to the Lembaga Rayuan Tatatertib Perkhidmatan Pendidikan, Suruhanjaya Perkhidmatan Pelajaran Malaysia ("R4"). He was
I notified by letter dated 1 December 2020 received by him on 22 February 2021 that on 24 November 2020, R4 had decided to dismiss his appeal.

[3] He commenced judicial review proceedings on 21 May 2021 through his mother. By reason of the COVID-19 pandemic the first return date of 14 June 2021 was vacated. On the following date of 17 September 2021 his solicitors obtained an order to discharge themselves. During the application for leave to commence judicial review proceedings, the Honourable Attorney General had no objections and leave was granted on 14 October 2021. The substantive application for judicial review was scheduled for 12 November 2021 but was adjourned to 13 December 2021 as the applicant applied (encl. 12) to pursue the action under his own name and to regularise the judicial review proceedings which was filed out of time by one day. His application to pursue the action under his name and his application (encl. 15) to extend time were by consent of all parties allowed on 13 December 2021 and the amended substantive application for judicial review scheduled for hearing on 12 April 2022. The reliefs he sought was for an order of *certiorari* to quash the decisions of R3 and R4 and for an order of *mandamus* directed towards his former employer, the Government of Malaysia ("R1"), and the Ministry of Education ("R2"), to be reinstated to his former employment without any loss of benefits.

[4] On 12 April 2022, after hearing the oral submissions of the parties who had earlier filed written submissions, this court reserved its decision to 7 June 2022 when the reliefs sought by the applicant were allowed with costs. This is the grounds of judgment for the decision made on 7 June 2022.

Applicant's State Of Mental Health

[5] From the records placed before the court, the applicant has been undergoing treatment for "panic disorder" and "depression" at the Psychiatric Department of the Mental Health Hospital in Kuala Lumpur since 2006.

[6] By reason of his mental condition, he was transferred to teach in a school in Perak in 2007. Upon being transferred he underwent treatment at the Specialist Psychiatric Clinic at the Raja Permaisuri Bainun, Ipoh.

[7] He was required to be examined by the medical board on 7 April 2014, where he was confirmed to be suffering from major depression with panic attacks.

[8] He was offered to be medically boarded out by notice dated 12 June 2014 but he declined *via* his letter dated 19 June 2014.

[9] A report was produced by the Psychology Management Department of the Public Services Department of Malaysia dated 14 August 2015 after he had undergone counselling. This report (encl. 2 pdf 43/86) makes mention of the various tests undertaken by the applicant and the overall assessment about the applicant as stated below:

A Secara keseluruhannya, berdasarkan permerhatian dan penilaian yang dijalankan bersama klien, dapatan permerhatian menunjukkan beliau masih mempunyai tahap komunikasi yang baik dan mesra. Kemahiran dan daya tindak dalam menghadapi permasalahannya kehidupan hariannya masih kreatif. Pegawai dilihat lebih positif tentang masa akan datang. Bersedia untuk menceburi bidang pendidikan informal, kelompok yang
B kecil dan tidak terlalu mencabar berbanding situasi persekolahan harian. Keupayaan dan cabaran untuk tidak bergantung kepada ubat dilihat sebagai berjaya. Klien disarankan perlu mengikuti rawatan susulan kaunselor dan (*sic*) pakar psikiatri secara berterusan bagi memantapkan perubahan yang lebih positif.

C **[10]** Despite the very encouraging report, it is clear from the report that the applicant has to continue to undergo follow-up treatment from specialist psychiatrists on a continuous basis.

[11] Owing to the above, by a letter dated 8 September 2016, he was asked to report back to work at Sekolah Kebangsaan Jalan Pegoh, Ipoh, Perak on
D 13 September 2016.

Disciplinary Action

[12] Some three years later, by letter dated 8 October 2019, he was charged with misconduct by the Ketua Setiausaha Kementerian Pendidikan Malaysia
E with the caption "surat pertuduhan tindakan tatatertib dengan tujuan buang kerja atau turun pangkat".

[13] The charge under reg. 37 of the Public Officers (Conduct and Discipline) Regulations 1993 in the main is that he had absented himself without leave and justification on many days in 2018 and 2019.

F **[14]** At about this time, the applicant was undergoing a series of treatment for soft tissue injury and musculoskeletal pain over his lower back at the Orthopaedic Department at Raja Permaisuri Bainun Hospital in Ipoh (encl. 2 pdf 55 of 85).

G **[15]** However, as directed, he duly put forward his letter of representation dated 10 November 2019 in answer to the charges brought against him. He enclosed his follow-up orthopaedic treatment card (encl. 2 pdf 50 of 86), various medical chits and a consent form directed to the Director of the Raja Permaisuri Bainun Hospital in Ipoh, Perak consenting for his psychiatric
H records to be released to the headmaster of the school that he was teaching (encl. 2 pdf 56 to 60 of 86).

[16] It is to be observed that he had earlier obtained a letter dated 2 May 2019, from the Psychiatric Department of the Mental Health Hospital at the Raja Permaisuri Bainun Hospital in Ipoh, Perak addressed to the headmaster
I of the school where he was teaching saying that he has been receiving treatment for major depression since January 2009 and that this is a serious mental illness (encl. 2 pdf 50 of 86).

[17] A decision was made by R3 on 14 January 2002 and conveyed by letter dated 28 January 2020 (encl. 2 pdf 65 of 86) that the applicant was not able to exculpate himself from the said charges and R3 found him guilty.

[18] R3 proceeded to levy punishment pursuant to reg. 38(c) of the Public Officers (Conduct and Discipline) Regulations 1993 (PU(A) 395/1993). Save for 13 days, all the other days that he was absent without leave were held to be without justification and his right to emoluments were forfeited and he was dismissed with effect from 14 January 2020.

[19] He appealed to R4. No issue was taken that his appeal seemed to have been made a few days outside the prescribed 14 days for appealing and during submissions, learned Senior Federal Counsel confirmed that no objections were taken by R4 and he is not taking issue with this.

[20] In his appeal to R4 made *vide* his letter dated 23 February 2020, (encl. 2 pdf 68 to 71 of 86) he had detailed the reasons on each occasion as to why he was absent.

[21] He enclosed, *inter alia*, all his medical (psychiatric and counselling) reports together with his various letters of appeals including seeking to be transferred to teach in the afternoon sessions because his depression medication makes him drowsy in the mornings making it difficult to get up early causing him not to be able to turn up for work.

[22] In para. 4 of his letter of appeal he said:

> ... saya pemah beberapa kali telah memohon pertukaran ke sekolah sesi petang dengan harapan perubahan akan dapat membantu saya mengatasi isu ketidakhadiran ke sekolah. Walaubagaimanapun, sehingga kini kesemua permohonan tersebut tidak pernah mendapati pertimbangan oleh pihak Jabatan Pendidikan Negeri.

[23] The applicant had also in his letter of representation (encl. 31 pdf 41) beseeched and renewed his appeal that he be allowed to teach in the afternoon sessions (his previous appeals on this request having been turned down). He said he is still keen to continue in the teaching profession, failing which he requested that he medically be boarded out. He ended his appeal by saying:

> Andaikata sekiranya saya dikenakan tindakan tatatertib buang kerja masa depan saya akan hancur. Personaliti saya yang lembut senang dipermainkan oleh orang terutamanya jika bekerja di sektor swasta.

[24] R4 replied to say that at its meeting number 808 held on 4 November 2020, it has upheld R3's decision to have him dismissed. The letter from R4 dated 1 December 2020 was received by the applicant on 22 February 2021. The ground given by R4 for dismissing the appeal was cursory and it says:

> ... setelah menimbang rayuan tuan mendapati rayuan tersebut tidak mempunyai asas yang kukuh bagi mengubah keputusan Lembaga Tatatertib yang berkenaan.

A **Core Issue**

[25] The main gangplank of the applicant's case is that R3 ought to have set up a committee of investigation ("CI") to ascertain the state of the applicant's mental health condition pursuant to reg. 37(5) of the Public Officers (Conduct and Discipline) Regulations 1993, and if it had done so, the specialised knowledge on mental health would be made available especially that on major depression and panic disorders and this would have most probably exculpated the applicant.

[26] The said reg. 37(5) provides as follows:

> If the appropriate Disciplinary Authority is of the opinion that the case against the officer requires further clarification, the Disciplinary Authority may establish an Investigation Committee for the purpose of obtaining such further clarification.

[27] Underlying this contention, the applicant asserts that R3 would not have the ability to assess the psychiatric condition of the applicant and ought to have established the CI. This failure has resulted in the applicant being denied the opportunity to call witnesses, that is, the specialist psychiatrists who have treated him or (independent) specialists from the medical board to verify his state of health which caused him to absent himself.

[28] Closely related to this issue is that the applicant asserted he was denied the right to mitigate before such a drastic action to dismiss him was made.

Applicant's Position

[29] The applicant asserted that R3 failed, neglected or omitted to obtain further clarification and to investigate into the state of health of the applicant as presented by him in his letter of representation. Reliance was placed upon reg. 37(5) of the Public Officers (Conduct and Discipline) Regulations 1993.

[30] With R3 not having the expertise in psychiatric evaluation, it was only reasonable for a CI to be established to assess, examine and to investigate the applicant's medical condition premised upon the available evidence and the advice of experts in this area.

[31] Learned counsel for the applicant asserted that such a procedure is available and can be found in reg. 37A(3) (*sic* – should be 37B(3)) of the Public Officers (Conduct and Discipline) Regulations 1993 which provides as follows:

> (3) If witnesses are called and examined by the Investigation Committee, the officer shall be given an opportunity to be present and to cross-examine the witnesses on his own behalf.

[32] By reason of the failure of R3 to set up the CI and to follow the procedure prescribed in reg. 37B(3), the applicant had been denied the opportunity to lead evidence as well as to cross-examine the witnesses, that

is, the specialist doctors that were treating him or the doctors from the medical board to ascertain the applicant's medical health which caused his absenteeism.

[33] The proceedings before both R3 and R4 were held in the absence of the applicant. By reason thereto, the applicant was denied the right to mitigate before the most severe punishment, that of dismissal, was handed down. Reliance was placed on the Court of Appeal authority of *Nazrul Imran Mohd Nor v. Civil Service Commission Malaysia & Anor* [2021] 10 CLJ 737, where it was held that:

> [87] In addition, the right to mitigate before sentencing is a right well-established. The right to mitigate is now trite and fundamental as it has been accepted that sentence should not be meted out unless the person concerned is heard. This is an issue of fairness to be accorded to a person before sentencing. Especially when the disciplinary action taken, as earlier stated, was with the view to dismissing him or to reduce his rank. Had the right to mitigate been afforded, there is always the possibility that he might not be dismissed from service. The fact is before the sentence to dismiss him was made, he was not asked to mitigate. Rightly, the decision of the first respondent ought not to stand based on this reason too. Thus, even if it may be right to maintain that an inferior tribunal has the right to sentence as it wishes, before that right is exercised, the person facing that tribunal must be given the right to mitigate.

[34] The failure to allow the applicant to mitigate had deprived him of the opportunity to plead for leniency in the punishment to be meted out as reg. 38 of the Public Officers (Conduct and Discipline) Regulations 1993 allows for other lesser modes of punishment such as a warning, fine, suspension or reduction of salary or demotion.

[35] These failures and omissions on the part of the applicant resulted in the decision-making process of R3 to be irrational and invalid, particularly with no explanation or reasons given in rejecting the grounds presented by the applicant. Reliance was again placed on the Court of Appeal authority of *Nazrul Imran Mohd Nor v. Civil Service Commission Malaysia & Anor* (*supra*), where it was held that:

> (3) It was incumbent upon both respondents not to merely say that the appellant did not exculpate himself in respect of the charge against him by the representation he had sent. These statements made, that were without any basis given, no matter how strenuously made, remained devoid of any substance or weight. Both respondents, especially the first respondent, were duty-bound to explain and give reasons for rejecting the grounds given by the appellant in his representation in answering the charge. Unfortunately, this was not done by the respondents. Furthermore, the failure of the first respondent to explain why the appellant was found not able to exculpate himself, also gave credence to the contention that the first respondent did not sufficiently consider the appellant's defences. If indeed the first respondent had taken into account

A the appellant's defences and had rationally considered the same, surely reasons would be provided for rejecting the appellant's defences. (paras 65 & 66)

[36] Similarly, at the appeal before R4, with all the medical reports laid before it, in particular that dated 2 May 2019 (encl. 30 pdf 27 of 39), which
B was before disciplinary action was taken against the applicant, it was irrational, procedurally improper, invalid and unreasonable of R4 to uphold the decision of R3 to dismiss the applicant.

[37] The failure by R3 to establish a CI and the failure by R4 to make a careful assessment of the medical condition of the applicant and the evidence
C laid before it shows that both R3 and R4 had made decisions which are *ultra vires* their respective jurisdictions, irrational and unreasonable.

[38] It would be helpful to reproduce hereunder the medical report of 2 May 2019 by the Psychiatric Department and Mental Health Hospital, Raja Permaisuri Bainun, Ipoh on the applicant and addressed to the
D headmaster of his school:

2. Penama diatas sedang mengambil rawatan dari pihak kami sejak 22HB JANUARI 2009 disebabkan masalah kurang tidur, susah untuk menumpukan perhatian kepada Kerja dan merasa murung.

E 3. Beliau didapati mengalami penyakit MAJOR DEPRESSION dan pada masa sekarang diberi pengubatan T. Sertraline 25mg malam. Ini merupakan satu jenis penyakit mental yang serius dan memerlukan pengubatan yang berterusan untuk masa yang tertentu. Beliau disyorkan untuk mengikut temujanji perawatan dengan pihak hospital dengan teratur.

F **[39]** The applicant added that R3 and R4 had failed to take into account that:

(i) he was still liable to service the housing loan given by the Government. He has no other source of income to settle his monthly instalments of
G RM997.97 for the next 17 years; and

(ii) he had represented that as the eldest child, he has the responsibility to care for his 75-year-old mother as his father had passed away in April 2019 and his other siblings who reside in Kuala Lumpur are unable to assist (encl. 32 pdf 41 of 63).

H **[40]** Reliance was also placed upon the High Court authority of *Yuganthiran Guinda Rajoo v. Dato' Seri Hj Mustafar Hj Ali (Pengerusi Lembaga Tatatertib Kumpulan Sokongan (No. 1) Jabatan Imigresen Malaysia, Putrajaya) & Ors* [2021] 1 LNS 2359, where Abdul Murad Abdul Aziz JC said he was persuaded by the decision of Justice Mariana Hj Yahya (as she then was) in
I the case of *Mohd Izzudin Yahya v. Suruhanjaya Perkhidmatan Awam* (Semakan Kehakiman No: WA-25-249-06-2019), where the applicant, a medical doctor who was absent from duty for a total of 165 days by reason of atypical

depression succeeded in his judicial review application by reason of the failure of the respondent to establish a CI or ought to have considered other forms of punishment. In *Yuganthiran Guinda Rajoo*'s case, the court held against the Disciplinary Board and the Appellate Board for failing to take into account the obligation of the applicant to take care of his sick father and aged mother.

Respondent's Position

[41] The learned Senior Federal Counsel filed two sets of written submissions; one primary and one in reply to the applicant's written submissions (encls. 40 and 43).

[42] He pointed out that:

(i) the Public Officers (Conduct and Discipline) Regulations 1993 provides for disciplinary action to be taken for absence from duty; and

(ii) by reason of the applicant's absence from duty, the disciplinary action taken was well within the prescribed regulations and prescribed procedure with reliance placed upon regs. 35(2), 37(1), 37(2) and 37(4).

[43] Upon finding the applicant guilty, R3 had pursuant to reg. 38(c) forfeited the applicant's emoluments for absence from duty and dismissed him.

[44] In compliance with reg. 52 the applicant was duly informed of R3's decision by letter dated 28 January 2020, and in accordance with regs. 13 and 14(1) of the Education Service Disciplinary Board Regulations 1994 (PU(A) 458/1994), the applicant was notified of his right of appeal to R4.

[45] The respondents assert that "judicial review is not to review the decision but the decision-making process" and "in a judicial review application, the court is not exercising its appellate jurisdiction but supervisory jurisdiction" with reliance placed upon the authorities of *Ng Hock Cheng v. Pengarah Am Penjara & Ors* [1998] 1 CLJ 405 (FC) and *T Ganeswaran lwn. Suruhanjaya Polis Diraja Malaysia & Satu Lagi* [2005] 3 CLJ 302 (CA).

[46] The attention of the court was drawn to the High Court authority of *In Re: R Kesavan Rajathurai* [2018] 1 LNS 93; [2018] MLJU 81, which cited *Harpers Trading (M) Sdn Bhd v. National Union Of Commercial Workers* [1991] 2 CLJ 881; [1991] 1 CLJ (Rep) 159; [1991] 1 MLJ 417, where the Supreme Court held that:

> ... it should be treated as trite law that judicial review is not an appeal from a decision but a review of the manner in which the decision was made and the High Court is not entitled on an application for judicial review to consider whether the decision itself, on the merits of the facts, was fair and reasonable.

[47] Next, the respondents asserted that the Federal Court has held that from the general orders, it can be clearly concluded that it is the disciplinary authority and not the court who is to decide whether the officer in his written representation has exculpated himself, see *Public Services Commission Malaysia & Anor v. Vickneswary RM Santhivelu* [2008] 6 CLJ 573; [2008] 6 MLJ 1, which incidentally was followed by Mariana Yahya J in *Mohd Ezri Saad lwn. Tan Sri Dato' Sri Khalid Abu Bakar & Yang Lain* [2021] 1 LNS 777; [2021] MLJU 978.

[48] Therefore, with R3 having complied with the procedural requirements and having come to a conclusion that the applicant was guilty of the charges and handed down punishments permissible in law, the decision by R3 is not a nullity and at all material times was in accord with fairness and natural justice.

[49] The applicant was also accorded his right of appeal to R4 pursuant to regs. 13 and 14(1) of the Education Service Disciplinary Board Regulations 1994, and the applicant did make his representations to R4.

[50] R4 sat on 24 November 2020 to consider the applicant's appeal and having found it to be without a strong basis, dismissed the appeal and maintained the decision of R3. This, the respondents assert is in keeping with reg. 15 of the Education Service Disciplinary Board Regulations 1994.

[51] The respondents added that procedurally, R4 was not obliged to consider the further documents presented for purposes of the appeal but it did (encl. 40 para. 30 and encl. 43 para. 18). Therefore, the decision made by R4 was one made after having perused all the documents presented and after full consideration of the merits and should not have been challenged by the applicant in court (encl. 40 para. 31).

[52] As for the complaint by the applicant that he was not given the right to be heard, the learned Senior Federal Counsel referred to the case of *Ghazi Mohd Sawi v. Mohd Haniff Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 CLJ 333; [1994] 2 MLJ 114, where the Supreme Court held that:

> The 'right to be heard' does not mean the right to be heard orally. What it means is that the officer concerned should be given a full opportunity of stating his case.

[53] The aforesaid principle in the case of *Ghazi Mohd Sawi* was followed by the Federal Court in *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal* [2001] 2 CLJ 525; [2001] 2 MLJ 417.

[54] In the circumstances of this case, learned Senior Federal Counsel asserted that the applicant was given a full opportunity of stating his case, which he did *vide* his letter of representations dated 18 November 2019 (*sic* – should be 10 November 2019) (encl. 31 pdf 28 of 63) and justice had been accorded to the applicant.

[55] In his submissions in reply (encl. 43), learned Senior Federal Counsel relied upon the case of *Minister Of Labour, Malaysia v. Sanjiv Oberoi & Anor* [1990] 1 CLJ 44; [1990] 1 CLJ (Rep) 200; [1990] 1 MLJ 112 for the principle decided by the Supreme Court that there was no obligation for a Minister of Labour to give any reasons when he exercises his discretion under s. 20(3) of the Industrial Relations Act 1967 whether to refer the representation to the Industrial Relations Court. Another authority for this principle in *Nordin Hj Zakaria (Timbalan Ketua Polis Kelantan) & Anor v. Mohd Noor Abdullah* [2004] 2 CLJ 777; [2004] MLJU 760 (FC) was also cited.

[56] Premised on this principle, he asserted that R3's power is similarly discretionary in nature and it may proceed to consider and make its decision under reg. 37(4) of the of the Public Officers (Conduct and Discipline) Regulations 1993 and I understood the learned Senior Federal Counsel as submitting that based upon the authority of *Minister of Labour, Malaysia v. Sanjiv Oberoi & Anor* (*supra*), there is no necessity for R3 to provide any reason for its decision (encl. 43 para. 13).

[57] As for the setting up of a CI, the respondents assert it is not a statutory requirement but is subject to the discretion of the disciplinary authority. Authorities from the Court of Appeal and the High Court were cited where it was held that it was discretionary, see *Mohd Sobri Che Hassan v. Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor* [2018] 2 CLJ 715; [2017] MLJU 1549 (CA), *Raffic Ani lwn. Ketua Polis Negara, Selaku Pengerusi Lembaga Tatatertib Polis Diraja Malaysia dan Yang Lain* [2021] 1 LNS 1352; [2021] MLJU 1643 (HC).

[58] For good measure, the respondents asserted that even if a CI was established under reg. 37B of the Public Officers (Conduct and Discipline) Regulations 1993, the right given to the applicant would only be to attend and cross-examine the witnesses on his own behalf.

[59] The respondents assert that the issue of the applicant not having been given the right to mitigate was not raised by the applicant in his affidavit in support and affidavit in reply and by reason thereto, ought not to be allowed to be considered by the court. Reliance was placed on *Janagi v. Ong Boon Kiat* [1971] 1 LNS 42; [1971] 2 MLJ 196 (HC) and *Yew Wan Leong v. Lai Kok Chye* [1990] 1 CLJ 1113; [1990] 1 CLJ (Rep) 330; [1990] 2 MLJ 152 (SC).

[60] In any event, the respondents added that such a right is not provided in the Public Officers (Conduct and Discipline) Regulations 1993.

[61] It was pointed out that the Federal Court had in *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal* [2001] 2 CLJ 525; [2001] 2 MLJ 417 held that:

> ... a plea in mitigation on sentence exists only in a trial in a court of law which employs a distinct form of procedure where the hearing is restricted to determining the guilt of an accused. A separate less formal inquiry is conducted after he is found guilty by the court to enable the appropriate sentence to be passed. It is only at this state that the accused is allowed to plead in mitigation. But a disciplinary inquiry is not a trial. The officer is only required to exculpate himself as provided under O. 26(2). He is at liberty to plead for a lesser punishment but this must be incorporated in the representation he wants to make to the authority to exculpate himself. There could, therefore, be no question of a denial of his right under art. 135(2) of the Constitution or under O. 23 of the Public Officers (Conduct and Discipline) (Chapter 'D') General Orders 1980.

[62] Finally, on the issue of the applicant's request for a posting to the afternoon teaching sessions, the respondents assert that this is outside the jurisdiction of R3 which is concerned only with disciplinary issues and as for R4, it only has the jurisdiction to receive, consider and decide on an appeal. If at all, this issue is to be taken up with the district education office or the education department before disciplinary action was commenced.

Court's Analysis And Findings

Review For Substance

[63] In *Savithri Vello v. Eversendai Constructions (M) Sdn Bhd & Anor* [2022] 5 CLJ 162; [2022] 2 ILR 389, I had occasion to say that:

> [8] The Federal Court in *Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd* [2010] 8 CLJ 629; [2010] 4 ILR 475; [2010] 6 MLJ 1, which followed the earlier Federal Court case of *R Rama Chandran v. Industrial Court Of Malaysia & Anor* [1997] 1 CLJ 147; [1997] 1 MLJ 145 has made it clear that *in a judicial review application, the High Court may review the decision-making process of the inferior tribunal, such as the Industrial Court, on grounds of illegality, irrationality and proportionality, which permit the courts to scrutinise the decision not only for process but also for substance*.
>
> (emphasis added)

[64] Having said that, after referring to the case of *Ranjit Kaur S Gopal Singh* (*supra*), I had occasion to say in *Tai Chin Yee v. Tong San Chan Distributors Sdn Bhd & Anor* [2021] 1 LNS 543; [2021] 3 ILR 29 that:

> [25] ... this court is mindful of the caution expressed by the YA Lee Swee Seng JCA speaking for the Court of Appeal in *Ng Chang Seng v. Technip Geoproduction (M) Sdn Bhd & Anor* [2021] 1 CLJ 365 that 'while the distinction between a review and an appeal may now be blurred **it is not banished altogether** where the challenge to the inferior tribunal's decision is based on illegality, irrationality and procedural impropriety or even proportionality.' (emphasis added)

[65] In *Ng Chang Seng v. Technip Geoproduction (M) Sdn Bhd & Anor* [2021] 1 CLJ 365, the Court of Appeal went on further to say:

> [32] Whilst a review may be akin to an appeal, it is not to be equated with an appeal and the dividing line between a review and an appeal is distinctly different. *A review may come close to resemble an appeal only when the decision of the tribunal cannot be justified at all, infected as it is with illegality, irrationality, procedural impropriety or proportionality. Otherwise, the court in exercising its review jurisdiction which is of a supervisory nature would defer to finding of facts of the tribunal.* (emphasis added)

State Of Applicant's Medical/Mental Health Not Addressed

[66] The applicant had laid materials both before R3 and R4 on his state of medical, or to be more precise, his mental health, materials in the form of documents which R4 had admittedly considered. However, there was no finding at all as a matter of fact in their decisions conveyed by R3 in its letter dated 28 January 2020 (encl. 2 pdf 65 of 86) and by R4 in its letter dated 1 December 2020 (encl. 2 pdf 82 of 86) on the medical condition of the applicant.

[67] Despite having produced evidence of him receiving psychiatric treatment, as well as a copy of the letter dated 2 May 2019 from the Psychiatric Department and Mental Health Raja Permaisuri Bainun, Ipoh (encl. 30 pdf 27 of 39) and addressed to the headmaster of his school, which clearly says that he was suffering from major depression (with this phrase set out in capital letters by the Psychiatric Department) since 22 January 2009 (with the date also set out in capital letters by the Psychiatric Department), there was no mention at all by R3 or R4 (see their affidavits in encls. 30 and 31), and for that matter by the learned Senior Federal Counsel in his submissions to deal with the applicant's ailment which was described by the Psychiatric Department of R1's own general hospital and signed off by a Consultant Specialist ("Pakar Perunding") as "penyakit mental yang serius" (encl. 30 pdf 27 of 39).

[68] The silence to deal with this serious ailment suffered by a man who is struggling to cope and who at the same time is desperately seeking to hold onto his job which he cherishes is deafening.

[69] The court observed that the Ministry of Education Malaysia ("R2") was made a party to this judicial review application. Despite being made a party, it did not take the opportunity to address the issue as to why it had refused the applicant's repeated appeals to be transferred to the afternoon teaching sessions.

[70] Instead, the respondents collectively were content to take refuge behind the skirts of R3 and R4 that this has nothing to do with the respective roles of R3 and R4. To add insult to injury, the respondents in their submissions asserted that it was for the applicant to take this matter up with

A the district education office or department before disciplinary action was taken. Obviously, the respondents have forgotten that the applicant had in fact done so and it is unacceptable for the respondents to seek to shift the applicant from pillar to post to seek relief resulting in the respondents having dealt with this issue in an arbitrary, unreasonable, capricious and irrational
B manner.

[71] It is unfortunate that the respondents have collectively failed to show kindness to the applicant necessitating him having to come to the court to seek justice and undoubtedly, the compassion of this court on the situation in which the applicant finds himself, and this court ought not to turn him
C away. Along the path on Constitutional Hill in Johannesburg leading to The Constitutional Court of South Africa, the highest court on constitutional matters, is a big structure made up of letters that reads "BE KIND". Its location within the grounds of the Constitutional Court makes it clear that it is this attribute that the Constitutional Court holds dear, and which
D underpins the cornerstone of a civilised society of equals governed by the rule of law.

[72] The American psychiatrist, Theodore Isaac Rubin said in words which resonate very well with this court and I quote, "Kindness is more important than wisdom and the recognition of this is the beginning of wisdom."

E

[73] The respondents' other attempt to seek to justify their indifference to the appeals by the applicant by asserting that when an office-bearer exercises a discretion vested in him there is no obligation to give any reasons is misplaced because the courts have steadily moved on since the decision of *Minister Of Labour, Malaysia v. Sanjiv Oberoi & Anor* [1990] 1 CLJ 44; [1990]
F 1 CLJ (Rep) 200; [1990] 1 MLJ 112 made more than 30 years ago and the case of *Nordin Hj Zakaria (Timbalan Ketua Polis Kelantan) & Anor v. Mohd Noor Abdullah* [2004] 2 CLJ 777; [2004] MLJU 760 made more than 18 years ago and relied upon by the respondents.

G **[74]** Transparency and accountability are the underlying jurisprudence of the day and rightly so, see *Kesatuan Pekerja-pekerja Bukan Eksekutif Maybank Bhd v. Kesatuan Kebangsaan Pekerja-pekerja Bank & Anor* [2017] 4 CLJ 265; [2018] 2 MLJ 590, where the Federal Court held that:

> It is also settled public law principle and principle of natural justice that
H a public decision-making body is under a duty to give reasons for its decision. Indeed, a reasoned decision can be an additional constituent of the concept of fairness. (*Rohana Ariffin & Anor v. Universiti Sains Malaysia* [1988] 2 CLJ Rep 390; [1989] 1 MLJ 487 and *Kelab Lumba Kuda Perak v. Menteri Sumber Manusia, Malaysia & Ors* [2005] 3 CLJ 517; [2005] 5 MLJ 193). The giving of reason is also one of the fundamentals of good
I administration.

[75] Recently, in *Perbadanan Pengurusan Trellises & Ors v. Datuk Bandar Kuala Lumpur & Ors* [2021] 2 CLJ 808 (the *Taman Rimba Kiara* case), on the issue of duty to give reasons, Mary Lim Thiam Suan JCA (now FCJ) held:

> [112] Then, there is the matter of duty to give reasons. We would have thought that the law on this issue is fairly clear and settled from the early years of *Rohana bte Ariffin & Anor v. Universiti Sains Malaysia* [1988] 2 CLJ (Rep) 390; [1989] 1 MLJ 487 where it was ruled that a "reasoned decision can be an additional constituent of the concept of fairness" and where the reasons have to be given so that the right of appeal may be properly and meaningfully exercised; to *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 CLJ 65; [1999] 3 MLJ 1 [MPPP] where the Federal Court extensively reasoned on why there must be this duty to give reasons even if there is no express provision for such duty. According to the Federal Court, this duty to give reasons emanates from the concept of fairness; see also *Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd v. Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor* [2017] 4 CLJ 265 and *Mohamad Hassan Zakaria v. Universiti Teknologi Malaysia* [2017] 10 CLJ 36. (See discussions of the same in *Save Britain's Heritage v. Secretary of State for the Environment & Others* [1991] 2 All ER 10).

[76] In my considered view and with all due respect, I would follow the later Federal Court decision of *Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd* (*supra*) and hold that the absence of an express provision in the Public Officers (Conduct and Discipline) Regulations 1993 and Education Service Disciplinary Board Regulations 1994 for the decision-maker to give reasons does not mean that the duty does not exist unless and until the statute or subsidiary legislation specifically states so. Our case laws have developed progressively to instil an obligation on public authorities to explain their decisions. The Federal Court in *Kesatuan Pekerja-pekerja Bukan Eksekutif Maybank Bhd v. Kesatuan Kebangsaan Pekerja-pekerja Bank & Anor* [2017] 4 CLJ 265 categorically held that:

> The absence of such a provision ought not to be regarded as a cloak under which the decision maker can hide his rationale for making the decision, privy only to himself but a mystery to the interested parties or the public at large.

[77] The obligation to give reasons is all the more necessary in the circumstances of this case when the applicant's constitutional right to life under art. 5(1) of the Federal Constitution which includes livelihood is at stake.

[78] Recently, this issue was dealt by the High Court in *Rosmawati Ismail v. Pihak Berkuasa Tatatertib Majlis Bandaraya Pulau Pinang & Anor* [2022] 6 CLJ 617, where the court held:

> [81] In Malaysia, it has been held by the Court of Appeal that the expression 'life' as appearing in art. 5(1) of the Federal Constitution does not refer to mere existence but encompasses the right to continue in public

service and to be engaged in gainful employment subject to removal for good cause by resort to a fair procedure, see Gopal Sri Ram JCA in the case of *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 2 CLJ 771; [1996] 1 MLJ 261.

[79] With the issue of the applicant's mental health not canvassed at all, the inference to be drawn is that R3, and later R4 on appeal, did not consider it at all or failed to engage their minds on the need to establish a CI when it was clearly necessary to do so.

[80] In fact, there were no materials produced by the respondents to challenge the appellant's ailment of major depression and panic disorders, his daily morning struggles to cope with the side-effects of the medication he has to take, and R2's silence in the face of his appeals to be allowed to teach in the afternoon sessions and all of which were relied upon by the applicant to justify him having to be absent on many days.

[81] Accordingly, I agree with the assertion made by the applicant that in all fairness, R3 ought to have established a CI to address these issues pursuant to reg. 37(5) of the Public Officers (Conduct and Discipline) Regulations 1993.

[82] The failure by R3 to establish a CI in the circumstances of this case has meant that the applicant was subject to a disciplinary procedure that was unfair to him resulting in a decision which was illegal and irrational.

[83] I would add that with R3 not having given any reason for its failure to establish a CI in the circumstances of this case, I would go on to hold that there was no good reason not to establish one, when one was necessary, premised upon the materials laid before R3 and which ought to have been corrected by R4 on appeal resulting in a decision which was illegal and irrational.

[84] Only to this limited extent *ie*, the non-establishment of a CI when one was, in the circumstances of this case necessary, do I agree with the decision in *Yuganthiran Guinda Rajoo v. Dato' Seri Hj Mustafar Hj Ali (Pengerusi Lembaga Tatatertib Kumpulan Sokongan (No. 1) Jabatan Imigresen Malaysia, Putrajaya) & Ors* [2021] 1 LNS 2359, because the issue of whether the punishment of dismissal handed down on the applicant as a public officer was [dis]proportionate in the circumstances of this case ought to be dealt with after a CI had been set up and it would not be necessary for this court to consider in view of the decision I have made.

Proportionality Of Punishment

[85] However, as this action is being taken on appeal to the Court of Appeal and if the issue of proportionality is being addressed, with respect, I would agree with the applicant that in view of the applicant's medical condition, with the irrational and unreasonable refusal to have him

transferred to the afternoon teaching sessions to assist him to cope with the side-effects of the medication he has to take, I would hold that the punishment would be [dis]proportionate. Much learning on the issue of proportionality of punishment can be obtained in the recent Court of Appeal authority of *Sam Maark Verak v. Dato' Zainal Abidin Ahmad & Ors* [2022] 3 CLJ 661. See also the case of *Rosmawati Ismail* (*supra*).

[86] In *Sam Maark* (*supra*), the Court of Appeal had reviewed a number of authorities and held that the courts should be very slow to deem any punishment meted out by the Public Services Commission in disciplinary matters against public servants as being disproportionate because how strict the public sector wishes to be on matters of discipline may depend on many factors and circumstances and the justification may lie in the policies developed to tackle certain problems or issues that the public sector may be facing. Nevertheless, on the materials placed before the court, subject to what I had decided on the CI issue and set out above, the punishment meted out to the applicant would be disproportionate.

Mitigation

[87] I agree that the applicant ought to have been given an opportunity to mitigate before the punishment was handed down, see *Nazrul Imran Mohd Nor v. Civil Service Commission Malaysia & Anor* [2021] 10 CLJ 737 (CA). However, this is a ground I would not take into account because I accept the submission made by the learned Senior Federal Counsel that it was a ground that was not raised in support of the application for judicial review.

[88] Although, the learned Senior Federal Counsel had relied upon the authorities of *Janagi v. Ong Boon Kiat* [1971] 1 LNS 42; [1971] 2 MLJ 196 (HC) and *Yew Wan Leong v. Lai Kok Chye* [1990] 1 CLJ 1113; [1990] 1 CLJ (Rep) 330; [1990] 2 MLJ 152 (SC), which are authorities for the principle that in civil litigation a trial court ought not to make a decision on an issue that was [not] raised by the parties in their pleadings, this principle apply as well in judicial review application. This has been decided in *V Paul Raj Chelladurai v. Jabatan Telekom Malaysia Bhd & Ors* [2000] 4 CLJ 882; [2000] 3 MLJ 652; [2000] 2 AMR 2435, where the Court of Appeal held that because the ground of, *inter alia*, not being given the opportunity to mitigate was not raised in the statement in support of the application for judicial review, such a ground cannot be allowed to be raised.

[89] It is indisputable in this case, the lack of opportunity to mitigate was not raised as a ground in his affidavits and in the statement filed by the applicant in support of his application for judicial review (encl. 3). Therefore, the ground of lack of opportunity to mitigate will not and cannot be taken into account.

[90] Before concluding, it would not be out of place to observe that the Supreme Court authority *Minister Of Labour, Malaysia v. Sanjiv Oberoi & Anor* [1990] 1 CLJ 44; [1990] 1 CLJ (Rep) 200; [1990] 1 MLJ 112 relied upon by the learned Senior Federal Counsel ought to be read with caution. This is because s. 20(3) of the Industrial Relations Act 1967 has since been amended by the Industrial Relations (Amendment) Act 2020. The new provision of s. 20(3) which came into force on 1 January 2021 has taken away the discretion of the Minister whether to refer the representations to the (Industrial Relations) court. This new provision now reads as follows:

> (3) Where the Director General is satisfied that there is no likelihood of the representations being settled under **subsection (2)**, the Director General **shall refer** the representations to the Court for an award.
>
> (emphasis added)

[91] There is also a new provision in the Industrial Relations 1967, *ie*, s. 33C, brought about by the Industrial Relations (Amendment) Act 2020 and which also came into force on 1 January 2021. In summary, with some saving provisions for matters which were commenced before 1 January 2021, this new provision provides that any person dissatisfied with an award of the Industrial Court **may appeal** to the High Court within 14 days from the date of the receipt of the award. Thus, cases involving judicial review of Industrial Court awards have to be read with this in mind. (emphasis added)

Conclusion

[92] Having given the matter my anxious consideration, I granted an order of *certiorari* to quash the decisions of Lembaga Tatatertib Perkhidmatan Pendidikan Kementerian Pendidikan Malaysia (R3) and Lembaga Rayuan Tatatertib Perkhidmatan Pendidikan, Suruhanjaya Perkhidmatan Pelajaran Malaysia (R4) and an order of *mandamus* against the Kerajaan Malaysia (R1) and Kementerian Pendidikan Malaysia (R2) to reinstate the applicant to his former employment without any loss of qualifications ("kelayakan") and benefits with costs of RM5,000 as prayed for by the applicant.